

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

BNSF RAILWAY COMPANY,

Plaintiff,

V.

**INTERNATIONAL ASSOCIATION
OF SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS –
TRANSPORTATION DIVISION and
BROTHERHOOD OF LOCOMOTIVE
ENGINEERS AND TRAINMEN,**

Defendant.

[illegible]

**CIVIL ACTION NO.
4:22-CV-00052-P**

JOINT REPORT REGARDING CONTENTS OF SCHEDULING ORDER

COME NOW, BNSF Railway Company, (“BNSF”), International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (“SMART”), and Brotherhood of Locomotive Engineers and Trainmen (“BLET”) and file this Joint Report Regarding Contents of Scheduling Order as required by the Court’s March 8, 2022 Order:

1. Details surrounding the Scheduling Conference.

The parties engaged in a telephonic Scheduling Conference on March 18, 2022. BNSF was represented on the call by Don Munro and Taylor Winn. SMART was represented on the call by Kevin Brodar. BLET was represented on the call by James Petroff and Joshua McInerney. Settlement options were discussed, but no significant progress was made. While the parties will continue to discuss potential resolutions for this case, the prospects for settlement at this time are low.

2. A brief statement of claims and defenses.

This lawsuit surrounds BNSF's implementation of its new "Hi-Viz Attendance Policy" ("Hi-Viz").

BNSF brings one count under Section 3 of the Railway Labor Act (“RLA”) seeking declaratory judgment that this is a minor, not major, dispute and preliminary and permanent injunctions to prevent SMART or BLET from using self-help. BNSF also brings a second count under Section 2 First of the RLA, alleging that BLET and SMART are failing to “exert every reasonable effort” to avoid the use of self-help and seeking both a preliminary and permanent injunction to prevent BLET and SMART from using self-help.

SMART raises the defenses of failure to state a claim, a lack of jurisdiction under the Norris-LaGuardia Act, and that this is a major dispute. SMART also brings three counterclaims: 1) BNSF violated the RLA, 45 U.S.C. § 152 First, Seventh, and Section 160, entitling SMART to a status quo injunction preventing the implementation of Hi-Viz; 2) BNSF violated Section 2 Fourth of the RLA by discriminating against union officers and interfering with union activity, entitling SMART to injunctive relief preventing the implementation of Hi-Viz; and 3) that the Hi-Viz policy interferes with BNSF employees’ ability to exercise FMLA rights.

BLET raises the defenses of failure to state a claim, that this is a major dispute, failure to present an actual controversy, this is a dispute over facts and rights so BNSF is not entitled to declaratory judgment, BNSF has unclean hands, estoppel, and lack of jurisdiction under the Norris-LaGuardia Act. BLET also brings six counterclaims: 1) violation of Section 6 of the RLA—improper altering of the CBA; 2) violation of Section 2 Seventh of RLA—failure to maintain status quo; 3) violation of Section 2 First of RLA—failure to exert every reasonable effort to maintain agreements; 4) violation of Section 2 Third of RLA—interfering with union activities through antiunion animus; 5) violation of Section 2 Fourth—interference with employees’ right to be in a union and engage in union activity; and 6) a request for an injunction preserving the status quo.

3. Deadline to Join Parties and Amend Pleadings.

April 28, 2022.

4. Deadlines to File Various Motions including Dispositive Motions.

August 2, 2022.

5. Deadline to Designate Experts and Responsive Designation of Experts.

July 2, 2022 to designate experts and July 16, 2022 to designate responsive experts.

6. Deadline to Object to Experts (i.e., *Daubert* and similar motions).

August 16, 2022.

7. Proposed Plan and Schedule for Discovery.

Discovery should close on September 2, 2022. All standard civil rules and limits should apply.

8. Proposed Changes to the Limitations on Discovery.

The parties believe that no changes or limits are necessary.

9. Proposal regarding ESI.

The parties do not anticipate that this case will involve significant ESI. If that does not prove to be the case, the parties will confer in good faith and attempt to reach an agreement regarding a protocol to follow.

10. Proposals regarding the handling of privileged or trial-preparation materials.

The parties agree that the potential need for a protective order may arise and that they will confer on the matter before coming to the Court with a motion.

11. Proposed Trial Date

The parties propose the week of March 6, 2023 for trial of this matter. A jury has not been demanded and the parties estimate that the case will take 2–3 days to try.

12. Proposed Mediation Deadline.

June 30, 2022.

13. Deadline to Exchange Initial Disclosures.

Between the parties' conversations and the amount of materials already exchanged, the parties agree that Rule 26(1) have effectively been made and have agreed to jointly waive any further disclosure requirements related to Rule 26(1).

14. Whether the parties consent to trial before Magistrate Cureton.

The parties do not consent to try this case before a U.S. Magistrate Judge.

15. Conference with the Court Desired?

The parties do not believe a conference with the Court is necessary at this time.

16. Other proposals regarding scheduling and discovery that would facilitate expeditious and orderly preparation for trial.

None at this time.

Respectfully submitted,

/s/ Taylor J. Winn

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